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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

CHARLES ELLERSON CARROLL, JR.,	)	CASE NO. 7:12CV00573
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION
v.	)	
	)	
BYINGTON,	)	By: Glen E. Conrad
	)	Chief United States District Judge
Defendant.	)	

Charles Ellerson Carroll, Jr., a Virginia inmate proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 alleging that a correctional officer made sexually suggestive comments to him. Upon review of the record, the court finds that the action must be summarily dismissed.

Carroll is an inmate at Wallens Ridge State Prison. The allegations in Carroll's § 1983 complaint are brief: "On 8-10-12, C/O Byington came to my cell #D1-101 during breakfast and stated, "If you suck my d---, I'll give you an extra tray. [I]f you suck it real good, I'll give you some dip." As relief in this action, Carroll demands one million dollars.

The court is required to dismiss any action filed by a prisoner against a governmental officer if the court determines the action is frivolous, malicious, or fails to state a claim on which relief may be granted. 28 U.S.C. § 1915A(b)(1). To state a cause of action under §1983, a plaintiff must establish that he has been deprived of rights guaranteed by the Constitution or laws of the United States and that this deprivation resulted from conduct committed by a person acting under color of state law. West v. Atkins, 487 U.S. 42 (1988). Allegations of verbal abuse and harassment by guards, without more, do not state any constitutional claim. Henslee v. Lewis,

153 Fed. App'x 179, 179 (4th Cir. 2005) (citing Collins v. Cundy, 603 F.2d 825, 827 (10th Cir. 1979)).

Carroll's allegations describe nothing more than verbal comments from the defendant. Although crude and unprofessional, the defendant's alleged conduct, even if proven, does not rise to the level of a constitutional violation actionable under § 1983. Accordingly, the court dismisses Carroll's complaint without prejudice, pursuant to § 1915A(b)(1), for failure to state a claim. A separate order will issue this day.

ENTER: This 4<sup>th</sup> day of January, 2013.



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Chief United States District Judge